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**IN THE
COURT OF APPEALS OF INDIANA**

DORSSIE R. CARTER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 18A02-0704-CR-313

APPEAL FROM THE DELAWARE CIRCUIT COURT

The Honorable Richard A. Dailey, Judge

Cause No. 18C02-0510-FC-36

August 24, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Dorssie R. Carter (Carter), appeals his sentence for Count I, causing death when operating a motor vehicle with a Blood Alcohol Content (BAC) of .08 or more, a Class C felony, Ind. Code § 9-30-5-5(a)(1).

We affirm.

ISSUE

Carter raises one issue on appeal, which we restate as follows: Whether the trial court abused its discretion in sentencing Carter.

FACTS AND PROCEDURAL HISTORY

On August 15, 2005, at approximately 5:30 p.m., Carter and fifteen-year-old B.M. were riding together in Carter's vehicle. Carter was intoxicated and drove his vehicle off the road into a tree. B.M. died as a result of the collision. Carter's toxology report showed a BAC of .086. Officer Kurt Walthour (Officer Walthour) of the Delaware County Police Department investigated the collision. Officer Walthour observed that it was a single vehicle collision and suspected the accident was caused by excessive speed.

On October 5, 2005, the State filed an Information charging Carter with Count I, causing death when operating a motor vehicle with a BAC of .08 or more, a Class C felony, I.C. § 9-30-5-5(a)(1). On January 23, 2007, Carter pled guilty as charged. On March 22, 2007, the trial court sentenced Carter to eight years in the Department of Correction.

Carter now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Carter argues the trial court abused its discretion in sentencing him to the maximum sentence for a Class C felony. Specifically, Carter contends the trial court erred in failing to consider his remorse and mental illness as mitigators. In addition, Carter claims the trial court improperly weighed the aggravators and mitigators.

“So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). An abuse of discretion occurs if a trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). Further, a trial court may impose any sentence within the statutory range without regard to the existence of aggravating or mitigating circumstances. *Anglemyer*, 868 N.E.2d at 489. However, to perform our function of reviewing the trial court’s sentencing discretion, “we must be told of [its] reasons for imposing the sentence. . . . This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions.” *Id.* at 490 (quoting *Page v. State*, 424 N.E.2d 1021, 1023 (Ind. 1981)). Such facts must have support in the record. *Anglemyer*, 868 N.E.2d at 489. In addition, we may review the reasons given for a sentence, as well as the omission of reasons arguably supported by the record. *Id.* at 491.

In the present case, Carter was convicted of causing death when operating a motor vehicle with a BAC of .08 or more, as a Class C felony. A Class C felony carries an advisory sentence of four years, a minimum sentence of two years, and a maximum

sentence of eight years. I.C. § 35-50-2-6. At the sentencing hearing, the trial court explained its reasons for imposing a sentence of eight years, finding as aggravators: (1) prior convictions including felony forgery in 1986, misdemeanor public intoxication in 1982, and misdemeanor operating a vehicle while intoxicated in 1996; (2) use of illegal drugs-cocaine in the past and marijuana while this case was pending; (3) driving on a suspended license due to lack of insurance; and (4) failure to accept responsibility for his crimes. The trial court found as a mitigating factor Carter suffered lasting physical effects as a result of the accident. After consideration of the aforementioned factors, the trial court sentenced Carter to eight years.

Carter first contends that the trial court erred in failing to consider as a mitigator his expression of remorse for his conduct and guilt about causing B.M.'s death. The record reveals that a social worker testified Carter exhibited remorse. However, in the instant case, despite the fact that there is evidence of remorse in the record, we cannot hold that the trial court abused its discretion by not recognizing remorse as a mitigating circumstance. The record clearly shows the trial court pondered and rejected this proffered mitigator by considering Carter lacked responsibility for his actions, and blamed B.M.'s parents for her death. The trial court stated that in Carter's eyes, "its always somebody's else's fault." (Transcript 78). Further, we have previously held that the trial court possesses the ability to directly observe the defendant, and is therefore in the best position to determine whether a defendant's remorse is genuine. *See Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). Accordingly, substantial deference

must be given to the trial court's evaluation of remorse. *Id.* Thus, the trial court did not abuse its discretion in failing to recognize Carter's remorse as a mitigating factor.

Second, Carter maintains that the trial court failed to consider as a mitigator his medical condition including mental health issues, medication and ongoing therapy. We disagree. In the case before us, the trial court found that Carter suffered lasting physical effects as a result of the accident as the only mitigating factor. "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Anglemyer*, 868 N.E.2d at 493 (quoting *Fugate v. State*, 608 N.E.2d. 1370, 1374 (Ind. 1993)). Thus, the trial court did not abuse its discretion in not recognizing Carter's mental illness as a mitigator.

Finally, Carter claims the trial court improperly weighed the aggravators against the single mitigator. However, the relative weight assigned by the trial court to mitigators and aggravators it recognized is not subject to our review for abuse of discretion. *Id.* at 491. Moreover, Carter's sentence is within the statutory range for a Class C felony and the trial court enumerated several reasons in support of its imposition of an enhanced sentence. *See Anglemyer*, 868 N.E.2d at 490. Therefore, we conclude the trial court did not abuse its discretion in the imposition of Carter's sentence.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion in imposing an eight-year sentence.

Affirmed.

SHARPBACK, J., and FRIEDLANDER, J., concur.